

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C.

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FEB 28 1997

Federal Communications Commission  
Office of Secretary

In the Matter of )  
Closed Captioning and Video )  
Description of Video Programming )  
Implementation of Section 305 of the )  
Telecommunications Act of 1996 )  
Video Programming Accessibility )

MM Docket No. 95-176

**COMMENTS OF QVC, INC.**

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February 28, 1997

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**COMMENTS OF QVC, INC.**

QVC, Inc. ("QVC"), by its attorneys, hereby files its comments on the Notice of Proposed Rulemaking ("Notice") in the above-captioned proceeding.<sup>1</sup>

**I. INTRODUCTION AND SUMMARY**

QVC fully supports Congress' and the Commission's efforts to make programming accessible to the hearing-impaired community. Indeed, QVC's programming is already fully accessible to hearing-

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<sup>1</sup> In the Matter of Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, MM Docket No. 95-176, released January 17, 1997 ("Notice"). The closed captioning provisions of the 1996 Act are codified in Section 713 of the Communications Act.

impaired individuals as a result of the QVC service's extensive use of on-screen depictions of the products and related text and graphics concerning price, sizes, ordering, and other essential information.

While the extensive use of on-screen textual and graphical information alone satisfies the "fully accessible" test under Section 713(b)(1), QVC has gone even further by establishing a dedicated customer service facility devoted to serving hearing-impaired individuals. This facility ensures that QVC hearing-impaired customers can use their "TDD" equipment<sup>2</sup> to contact specially-trained and experienced QVC customer service representatives to obtain additional product information and to place orders. This can be done at little or no additional cost to such customers because: (1) virtually all hearing-impaired individuals already possess TDD equipment; (2) even if they do not, such equipment is widely available at little or no cost; and (3) such customers may contact QVC through an 800 number dedicated to hearing-impaired callers. The hearing-impaired community has made extensive use of QVC's TDD facilities.

In addition, QVC's Internet web site ("iQVC") offers the hearing-impaired still more product information about the items that are concurrently being displayed on the QVC video service

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<sup>2</sup> "TDD" stands for telecommunications devices for the deaf.

and provides an alternative method for ordering these items, one which does not even require the use of a telephone.

In short, because the QVC programming service is fully accessible to the hearing-impaired community, QVC already satisfies the congressional requirement of full accessibility under Section 713(b)(1), and closed captioning is wholly unnecessary.

Not only does QVC meet the "fully accessible" requirement in Section 713(b)(1), it satisfies the "economically burdensome" test of Section 713(d)(1), as well. The significant costs of closed captioning QVC's 24-hour live unscripted service (potentially \$3.5 million annually) would far outweigh any putative benefit for hearing-impaired viewers, particularly in light of the fundamentally visual nature of the QVC programming service.

In fact, closed captioning could actually impair the QVC viewing experience for hearing-impaired viewers, since the captioning would block either critical on-screen product and ordering information or the visual image of the product itself. Moreover, the inaccuracies typical of real-time captioning could mislead hearing-impaired viewers about important aspects of the product (e.g., a product with a sale price of \$29.95 is inaccurately captioned with a price of \$49.95) and could negatively impact the perceived quality of QVC's products.

For these reasons, the Commission should, as part of the order adopted in this proceeding, exempt QVC from its closed-captioning requirements. As QVC demonstrates below, the

Commission is authorized to exempt individual services as part of this proceeding, and an individual exemption is fully justified for QVC.<sup>3</sup> Requiring QVC to repeat this justification in a separate proceeding would be administratively inefficient, wasting resources of the Commission and QVC, and would reduce the marketplace certainty required to efficiently allocate captioning resources to programmers that require them.

Finally, since all home shopping services share the same fundamental characteristics (namely, programming in which all the essential product and ordering information is conveyed visually on the screen, and for which closed captioning would be extremely expensive and detrimental to the quality and value of the programming), the FCC should exempt this class of programming in the order it adopts in this proceeding.

**II. SECTION 713(d)(1) AUTHORIZES THE COMMISSION TO EXEMPT, AS PART OF THIS RULEMAKING, INDIVIDUAL SERVICES, SUCH AS QVC, THAT MEET THE ECONOMICALLY BURDENSOME TEST.**

The Notice states that Section 713(d)(1) allows the Commission to exempt "classes of programming" where "the economic burden of captioning these programming types outweighs the

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<sup>3</sup> While new Section 713 of the Communications Act seeks to increase the accessibility of programming to hearing-impaired individuals, Congress was clear that not all programming must be closed captioned. In fact, in the legislative history to Section 713, Congress specifically stated its expectation that only "most," not all or even virtually all, new programming "will be closed captioned . . . ." H.R. Reg. 204, 104th Cong., 1st Sess. 114 (1995) ("House Report").

benefits to be derived from captioning and, in some cases, the complexity of adding the captions."<sup>4</sup> However, Section 713(d)(1) is not limited to exemptions for a class of programming, but plainly allows exemptions for individual program services. Section 713(d)(1) provides:

[T]he Commission may exempt by regulation programs, classes of programs, or services for which the Commission has determined that the provision of closed captioning would be economically burdensome to the provider or owner of such programming.<sup>5</sup>

The Commission is not at liberty to ignore the plain language of this provision<sup>6</sup> or to highlight certain words and exclude others.<sup>7</sup> The legislative history of Section 713(d)(1) fully supports this conclusion:<sup>8</sup>

Section [713(d)(1)] allows the Commission to exempt specific programs, or classes of programs, or entire services from captioning requirements.<sup>9</sup>

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<sup>4</sup> See Notice at ¶ 70.

<sup>5</sup> 47 U.S.C. § 613(d)(1) (emphasis added).

<sup>6</sup> See Chevron U.S.A. Inc. v. NRDC, 467 U.S. 837, 842-43 (1984) (if the plain language of the statute is clear, that is the end of the matter, for the court "must give effect to the unambiguously expressed intent of Congress").

<sup>7</sup> See Norman J. Singer, Sutherland Stat. Const. § 46.06 (5th Ed. 1992) ("It is an elementary rule of construction that effect must be given, if possible, to every word, clause and sentence of a statute.") (citations omitted).

<sup>8</sup> While resort to the legislative history is not required given the plain meaning of Section 713(d)(1), should the Commission nonetheless consider that history, it will find strong support for QVC's analysis.

<sup>9</sup> See House Report at 114 (emphasis added). The Conference Committee adopted the House version of Section 713. H.R. (continued ...)

Moreover, it is equally clear that Congress expected the Commission to grant or deny exemptions under Section 713(d)(1) as part of its order in this proceeding. Not only does this section explicitly state that exemptions under the economically burdensome standard should be implemented "by regulation" (and the Commission can only adopt "regulations" as part of an order in a rulemaking proceeding<sup>10</sup>), but the legislative history specifically states that:

Any exemption should be granted using the information collected during the inquiry, and should be based on a finding that the provision of closed captioning would be economically<sup>11</sup> burdensome to the provider or owner of such programs.

In short, Section 713(d)(1) directs the Commission to consider exemptions for individual services as part of this rulemaking proceeding. This approach makes sense for two reasons. First, by granting individual exemptions in this proceeding the Commission will reduce the number of discrete cases it will have to adjudicate under the ad hoc "undue burden" procedures established pursuant to Section 713(d)(3). By contrast, if the Commission declines to address the merits of

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(... continued)

Conf. Rep. No. 458, 104th Cong., 2d Sess. 182-84 (1996) ("Conference Report").

<sup>10</sup> See 5 U.S.C. § 553; Kenneth Culp Davis & Richard J. Pierce, Jr., Administrative Law Treatise, § 7.1, p. 287 (3rd ed. Little Brown 1994).

<sup>11</sup> House Report at 114.

individual exemptions in this proceeding, it will create unnecessary inefficiencies and burdens for all parties involved, particularly since the information submitted by programmers in this proceeding will simply be repeated under a separate "undue burden" analysis.<sup>12</sup> Second, addressing individual exemptions in this proceeding will allow the marketplace to work more efficiently. As the Commission has recognized, it is doubtful whether a sufficient number of adequately trained stenocaptioners exist to accommodate the tremendous amount of new captioning work that will be generated by Section 713, particularly for live services.<sup>13</sup> By granting exemptions to individual services such

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<sup>12</sup> In its discussion of Section 713(d)(3)'s undue burden standard, the Commission recognizes the efficiencies associated with analyzing exemption requests in a rulemaking context. See Notice at ¶ 100 ("In the alternative, we could allow video services providers or owners to petition for exemptions as part of more widely applicable rulemakings. To the extent that rules of general applicability could be adopted to address exemptions for broader classes of programming or providers than what fall within our general exemptions, this may be more efficient and less cumbersome than individual petitions for waiver. This could conceivably result in fewer proceedings since the result of one rulemaking could be applied to many different situations and would be applicable to all similarly situated video providers.").

<sup>13</sup> See Notice at ¶ 113 ("It is unclear that the number of stenocaptioners with advanced training to provide such captions at the highest quality levels is sufficient at this time to meet the expanded demand for stenocaptioning services that our proposed rules will engender"); id. at ¶ 108 ("Currently, the number of real time captioners is small"); id. at ¶ 24 (noting that VITAC, one of the six major captioning services, estimated that "there are likely to be only about 100 real time captioners nationwide today.").

as QVC in this proceeding, the Commission will facilitate a more efficient allocation of the limited captioning resources.<sup>14</sup>

Indeed, if the Commission refuses to consider individual service exemptions in this proceeding, but nonetheless adopts the tentative conclusions in the Notice to exempt certain classes of program services,<sup>15</sup> as well as individual programs within a service,<sup>16</sup> it would be engaging in arbitrary decisionmaking. The Commission cannot consider in this proceeding exemptions for two program types identified in the statute, but ignore the possibility of exemptions for the third program type identified in the statute, i.e., individual program services, if such

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<sup>14</sup> The fact that the Commission will phase in the closed captioning requirements over 8, 10, or more years is not an adequate answer to this resource allocation problem. It is critical for each program service to know as soon as possible whether it will have to implement closed captioning. For example, to the extent closed captioning becomes a point of discussion in programmer-distributor affiliation agreement negotiations, both programmers and distributors must be clear at the time of the negotiations which services are subject to the captioning requirements. Similarly, the closed captioning industry will have to know as soon as possible how much demand there will be for closed captioning, so it can hire additional employees and expand existing facilities accordingly.

<sup>15</sup> For example, the Commission asks whether all PEG access channels should be exempt. See Notice at ¶ 74.

<sup>16</sup> For example, the Commission proposes that all "live portions of noncommercial broadcasting stations' fundraising activities, e.g., pledge drives and on-air auctions," should be exempted. Id. at ¶ 81. Similarly, the Notice proposes to exempt "programming that is in languages which are not written using a Latin-based alphabet." Id. at ¶ 72. While the Notice characterizes these proposals as relating to a "class" of programming, they actually address specific portions of programming within individual program services.

services present a case for an exemption in their comments submitted on the Notice.<sup>17</sup>

**III. THE QVC SERVICE IS ALREADY FULLY ACCESSIBLE TO HEARING-IMPAIRED VIEWERS, AND CLOSED CAPTIONING IS WHOLLY UNNECESSARY.**

**A. Description of the QVC Service.**

Founded in 1986, QVC is a world leader in electronic retailing. It transmits live, unscripted, shop-at-home television programming 24 hours per day, 365 days a year to over 57 million households. A diverse menu of products is offered on the QVC service. Merchandise is selected based on product quality, uniqueness, demonstrability, timeliness, and appeal. QVC is one of only a handful of retailers with its own in-house quality assurance program and extensive warehouse quality control. A full-time staff of stage designers, technicians, and stylists makes sure each product is presented in the most appropriate way.

All products are covered by QVC's unconditional 30-day return policy. Under this policy, a customer can return any QVC product for any reason within 30 days of receipt. QVC issues the

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<sup>17</sup> Because the grant of an individual exemption for QVC is fully consistent with congressional intent, it does not matter whether all (or any) of the other individual services comprising the "class" of home shopping programming also seek an exemption under Section 713(d)(1). Moreover, as discussed in Section V, infra, given that all home shopping services, like QVC, are fundamentally visual in nature, QVC respectfully urges the Commission to exempt the entire class of home shopping programming as part of this proceeding.

customer either a refund or a credit on the customer's QVC account and also reimburses the customer for any expenses incurred in returning the item.

As the following sections illustrate, QVC has designed its service, and indeed its entire company, to be fully accessible to hearing-impaired individuals.

**B. QVC Programming is Already Fully Accessible to Hearing-Impaired Viewers.**

- 1. QVC Displays All Essential Product, Ordering, Pricing, and Shipping Information in Textual and Graphical Form On the Screen, Which Alone Makes the QVC Service Fully Accessible to the Hearing-Impaired Community.**

QVC programming is generally divided into one, two, or three hour blocks devoted to particular products, product lines, or types of product. During these blocks, QVC hosts and guests introduce such products to the viewing audience, demonstrate or display such products and their potential uses, and explain the pertinent ordering information such as product item number, product price, available sizes, and shipping and handling charges.

All essential information necessary for the viewer to make the basic buying decision to order the product is clearly presented in textual and/or graphic form on the QVC screen. Most importantly, the product itself is highlighted visually throughout the program. QVC camera crews are highly trained to use QVC's sophisticated video equipment to ensure that every aspect, angle, and view of each product is fully presented to the viewing audience. In fact, much of the time during each program

block is devoted to close-up views ("beauty shots") of the product itself.

Moreover, all of the essential descriptive and ordering information about each product is textually and graphically reflected in the "L"-shaped frame that constantly occupies a significant portion of the QVC screen. QVC calls this frame the "Dubner box."<sup>18</sup> Specifically, the Dubner box presents the following information for each product in textual format:

- Product Name and QVC Item Number
- Product Price
- Comparative Retail Price
- Special Introductory Price (where applicable)
- "Easy Pay" Installment Payment Alternative (where applicable)
- Number of Units Ordered
- Available Sizes and Colors (where applicable)
- Product Characteristics and Composition (where applicable) (e.g., "Sterling Silver Smoky Quartz Pendent with Chain;" "Ruby, Sapphire, and Emerald Stud Earring Set, 14 Kt Gold")
- QVC's 800 Order Number
- Shipping and Handling Charges
- Time Remaining on the Product Sell

Any important miscellaneous information, such as QVC's unconditional 30-day return policy, special ordering instructions or shipping deadlines, and methods of payment (e.g., Visa, Mastercard), are either included in the Dubner box or in

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<sup>18</sup> See Appendix A for a sample of QVC screens illustrating the extensive use of textual and graphical information to convey all essential product and ordering information to QVC viewers.

additional text "crawls" that periodically trail across the bottom of the screen. Also, QVC often uses text and graphics to explain and highlight certain aspects of complex products.<sup>19</sup>

In short, all essential product, ordering, and shipping information provided by the program host and guest orally is presented in textual and graphical form on the QVC screen. This makes perfect sense given that the purpose of the QVC service is to present an attractive, easily accessible visual portrayal of the product that will persuade the viewer to buy the product. QVC's success is critically dependent on how effectively it conveys this visual image. This is particularly true in the current multichannel video environment in which QVC's ability to grab the attention of a channel-surfing viewer who has temporarily tuned in to the QVC channel is largely dependent on how visually engaging the service is and on how quickly and easily the viewer can discern the essential information about the product in order to make his/her purchase decision.

Stated another way, any audio portion that is not presented textually or graphically on the screen is not essential to the buying decision made by the QVC customer. This fact is best illustrated by the viewer response QVC often receives to the product previews that air at the beginning of each hour. Often these previews consist of nothing more than a beauty shot of the

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<sup>19</sup> See Appendix B for a sample QVC screen illustrating QVC's use of such explanatory text and graphics.

product surrounded by the Dubner box. Even though these previews are accompanied by an audio description of the product that only repeats verbatim information already textually provided in the Dubner box, it is not uncommon for a product to sell out or to receive a very successful response even before the longer product presentation is given by the QVC host or guest during the hour.

For the foregoing reasons alone, the QVC service already satisfies the requirement under Section 713(b)(1) that the programming be "fully accessible" to hearing-impaired individuals, and closed captioning of the QVC service is thus wholly unnecessary. However, QVC has gone even further to accommodate the hearing-impaired community as discussed in the next section.

**2. QVC has Established Fully-Equipped and Staffed Customer Service Facilities Specifically Dedicated to Serving the Hearing-Impaired Community.**

To further meet the needs of the hearing-impaired, QVC has dedicated facilities and customer service personnel specifically to serving the needs of this community. These facilities are located in the QVC telecommunications center in Chesapeake, VA; they are fully equipped to handle incoming TDD telephone calls from hearing-impaired individuals, and are staffed 24 hours a day, 365 days a year, by experienced customer service agents who

have been specially trained in the use of TDD equipment and dealing with hearing-impaired callers.<sup>20</sup>

The TDD facility has a separate 800 number (800-544-3316) for the exclusive use of hearing-impaired viewers. QVC has periodically advertised the TDD 800 number on air. QVC intends to continue this practice and to increase its promotional efforts with respect to its TDD services.

QVC receives approximately 535 TDD calls per month. The TDD units allow TDD customer service agents to engage in full, two-way conversations with hearing-impaired individuals. They are able to answer any questions about specific products and can also process an individual's order directly. All TDD customer service agents are specially trained on the use of the TDD equipment and on how to effectively meet the specialized communications needs of individuals with hearing disabilities. All TDD customer service agents must have prior, regular customer service and operations experience at QVC before they are eligible to work in the TDD area.

Since virtually all hearing-impaired individuals already possess TDD equipment<sup>21</sup> or can obtain TDD units for little or no

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<sup>20</sup> These TDD customer service agents do not handle calls from non-hearing-impaired individuals. Rather, when these agents are not servicing hearing-impaired individuals, they provide general clerical support (e.g., operations analysis and monitoring and the handling of miscellaneous employee matters).

<sup>21</sup> Through conversations with representatives of the National Association for the Deaf and the National Institute of  
(continued ...)

cost from a variety of sources,<sup>22</sup> QVC's TDD facilities are readily accessible to all such individuals.<sup>23</sup> When the highly textual, graphical, and visual nature of the QVC programming service is considered in combination with QVC's TDD facility, it becomes even more apparent that the QVC service is already fully accessible to hearing-impaired individuals and that closed captioning is unwarranted.

**3. QVC's Interactive Internet Web Service Provides Hearing-Impaired Viewers With Additional Product and Ordering Information.**

While QVC's products are typically ordered via telephone (regular or TDD), QVC has also established a computer on-line service, called "iQVC," which allows PC users to connect to the iQVC web site on the Internet<sup>24</sup> to obtain more information about

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(... continued)

Health, QVC confirmed that virtually all hearing-impaired individuals have TDD devices in their homes.

<sup>22</sup> For example, many state and/or local agencies have established TDD equipment give away and loan programs for hearing-impaired individuals. See, e.g., Appendix C for an example of such an equipment loan program in Louisiana. Also, many states, such as California and New York, establish maximum rates which the phone company may charge for the lease of TDD equipment.

<sup>23</sup> QVC notes that Congress directed the Commission to consider the "existence of alternative means of providing access to the hearing impaired, such as signing" when analyzing a request for exemption under the economically burdensome standard. See House Report at 115. QVC submits that its dedicated TDD facility is precisely the type of "alternative means" contemplated by Congress in this regard.

<sup>24</sup> See <http://www.qvc.com>.

QVC products and to place orders. The iQVC service and the QVC television service are fully synchronized. The initial iQVC web page has a "current on-air item" button<sup>25</sup> which, if selected by the user, displays additional information about the product currently being aired over the QVC television service<sup>26</sup> and allows the user to order the product with a few simple clicks of the mouse and without the need for a telephone.

QVC recognizes that not every hearing-impaired individual has access to the Internet. However, a determination of whether the QVC television service is fully accessible to the hearing-impaired community does not depend on whether access to iQVC is universal. Indeed, as shown in the previous two sections, QVC is fully accessible to the hearing-impaired based on the extensive textual and graphical nature of the QVC television service and the universal availability of QVC's dedicated TDD facilities and personnel. QVC includes a description of the iQVC service merely to illustrate that those hearing-impaired viewers who are connected to the Internet, have an additional way to access and use the QVC programming service.

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<sup>25</sup> See Appendix D for a copy of the initial iQVC Internet web page.

<sup>26</sup> See Appendix E for a sample of this product information.

**IV. THE COMMISSION SHOULD EXEMPT QVC BECAUSE THE ECONOMIC BURDEN OF CLOSED CAPTIONING QVC PROGRAMMING WOULD FAR OUTWEIGH ANY PUTATIVE BENEFIT FOR QVC'S HEARING-IMPAIRED VIEWERS.**

Not only does QVC meet the "fully accessible" requirement in Section 713(b)(1), it satisfies the "economically burdensome" test of Section 713(d)(1), as well.

In crafting its "economically burdensome" test for exemptions under Section 713(d)(1), Congress ordered the Commission to consider, among others, the following factors: the nature and cost of providing closed captions; the cost of the captioning considering the relative size of the market served or the audience share; and the existence of alternative means of providing access to the hearing impaired.<sup>27</sup> The following analysis highlights these and other related factors, and demonstrates clearly that QVC qualifies for an exemption because the economic burden of a closed captioning requirement would outweigh any purported benefit for hearing-impaired individuals.

**A. The Economic Burden That Would Be Imposed on QVC to Close Caption Its Service Would Be Significant.**

Based on estimates QVC obtained from one of the principal national closed captioning services, it could cost QVC as much as \$3.5 million annually to close caption its service on a 24-hour basis. The \$3.5 million figure is based on a \$400/hour cost for the real-time captioning of a national service (i.e., \$400/hr x 24 hours/day x 365 days = \$3,504,000). The four principal

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<sup>27</sup> See House Report at 115 and Conference Report at 183.

aspects of this option are: (1) two complete real-time systems are dedicated to each telecast; (2) the live QVC service is delivered to the captioning service via satellite or fiber, with a fallback audio feed via telephone line; (3) in the event of an emergency, the service provider will replace a captioner with a supervisor or another captioner who is on standby; and (4) engineering support is provided by the service provider's technical operations center. The \$400 rate does not reflect any volume discount.<sup>28</sup>

The economic burden on QVC will be particularly acute given the highly perishable nature of QVC programming. Unlike movies, sit-coms, or other such programming which is often aired and re-aired many times, QVC (because it is 24-hour, live programming) generally has no residual market, so that production costs may not be spread out over multiple showings, as they may be for these other services.

In addition to its highly perishable nature, QVC programming rarely captures a portion of the viewing audience large enough to

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<sup>28</sup> While other, less expensive real-time captioning alternatives may be available, these options provide less redundancy and technical support capabilities. Given QVC's strong interest in maintaining the high quality of its service and its good reputation, these less expensive alternatives are less attractive to QVC.

QVC has also determined that the costs to close caption its service using in-house facilities and personnel would be very expensive and that it could not obtain a sufficient number of competent in-house stenocaptioners to sustain a high level of accuracy for QVC's unscripted 24-hour live programming service.

justify the costs of captioning. Congress specifically directed the Commission to consider the cost of closed captioning in light of the program service's audience share when analyzing exemption requests under the economically burdensome standard.<sup>29</sup> QVC's relatively small audience share (compared to network programming and other cable services) further highlights the fact that closed-captioning represents a unique cost burden for QVC, unwarranted by any marginal associated benefits that may accrue to hearing-impaired viewers.

**B. Closed Captioning of QVC Programming Would Provide Little, If Any, Benefit to Hearing-Impaired Viewers.**

**1. Since QVC is Already Fully Accessible to Hearing-Impaired Viewers, the Addition of Closed Captions Would Provide Little or No Incremental Subscriber Benefit.**

As shown above, in light of the fundamentally visual nature of the QVC service and the universal accessibility of QVC's TDD customer service agents to hearing-impaired individuals, QVC already satisfies the "fully accessible" requirement of Section 713(b)(1), and the imposition of a closed captioning requirement is wholly unnecessary. At best, captioning would be redundant to the information already fully accessible to hearing-impaired individuals. At worst, as discussed below, captioning could severely impair the QVC viewing experience for hearing-impaired individuals.

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<sup>29</sup> See House Report at 115.

**2. Captioning the QVC Service Could Actually Reduce the Value and Quality of the Programming for Hearing-Impaired Viewers.**

**a. Captioning QVC Will Block Critical On-Screen Information.**

The overlay of closed captioning on the QVC service would conceal essential product and ordering information. Specifically, the placement of captions for live programming is limited by current decoder technology to a single "block" portion of the television screen. The only logical placement of captions for QVC's service would be along the top or bottom third of the screen.<sup>30</sup> If placed in the lower-third of the QVC screen, the low-quality, real-time captioning of the host's (and/or the guest's) audio track will frequently obscure important, high-quality, and accurate textual information in the Dubner box and the video crawl.<sup>31</sup>

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<sup>30</sup> See Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, Report to Congress, MM Docket 95-176, released July 29, 1996, at ¶ 40 ("Report to Congress"). ("Currently, the only control the user has over this display is whether to activate the closed captioning feature on his television set. The user has virtually no ability to customize the closed captioning display to his individual needs or preferences.").

<sup>31</sup> See Report to Congress at ¶ 89 ("Open character generated announcements, such as emergency messages, election results, weather advisories and school closing information, which crawl across the bottom of the screen are obscured by captions.") (citations omitted).

Similarly, placement of the closed captioning in the upper-third of the screen would partially and often entirely conceal the on-screen visual image of the product itself, as well as the product item number. Under either scenario, the blockage of important on-screen textual or graphical information would result in a reduction in the accessibility and value of QVC programming to the hearing-impaired viewer.<sup>32</sup>

**b. The Inaccuracies that are Typical of Real-Time Captioning Would Further Impair the QVC Viewing Experience for Hearing-Impaired Individuals.**

As the Commission has recognized, closed captioning of live programming services is typically fraught with many types of inaccuracies. For example, the Notice points out that

in some contexts it may be virtually impossible to meet very high levels of [captioning] accuracy. As the record indicates, real time captioning is difficult and requires considerable training and expertise. In addition, accurate real time captioning of complex, highly technical or unfamiliar subject matter may be dependent on the availability, quality and breadth of computer dictionaries that are activated by the steno machine inputting the captions.<sup>33</sup>

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<sup>32</sup> See Appendix F for an illustration of how closed captioning the QVC service would block critical on-screen information. Moreover, even if QVC and consumers had greater flexibility regarding the placement and style of the captioning, this would not cure the blockage problem for QVC, since all parts of the QVC screen contain either an image of the product itself or significant textual and graphical product or ordering information.

<sup>33</sup> Notice at ¶ 114. See also Report to Congress at ¶ 91 ("[T]here are often errors in captions, including misspelled words, incorrect grammar, poor timing, inaccuracies and poor placement. Captions do not always match what the speaker is saying. Sometimes they are out of synchronization with the audio portion of the program. Accuracy is a problem, (continued ...)

Such inaccuracies will be particularly harmful to QVC's service for two reasons. First, given the highly technical and constantly changing nature of the on-screen subject matter (e.g., unusual brand names, unique descriptive jargon associated with each product line, etc.), inaccuracies would occur more frequently. Second, inaccuracies may produce misinformation about a product which could confuse, mislead, or frustrate hearing-impaired viewers and which may cause them to reconsider their decision to purchase that product. This could occur, for example, if the captioner were to mis-type the QVC item number, the weight in gold of a jewelry item, comparison prices, shipping and handling charges, or available sizes.<sup>34</sup>

All of the inaccuracies associated with real-time captioning will compromise QVC's overall program image and thereby diminish its good reputation. Such damage will tarnish the perception of the quality of QVC's programming and retail products and could directly impact QVC's sales.<sup>35</sup> Thus, because QVC is designed

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(... continued)

particularly with real time captioning.") (citations omitted).

<sup>34</sup> QVC also notes that it is subject to the Federal Trade Commission's and state disclosure and deceptive advertising regulations and that the inaccuracies produced by real-time closed captioning could inadvertently raise issues in these areas.

<sup>35</sup> This problem will be exacerbated in the future, since the increased demand for closed captioning services produced by the 1996 Act will spread the existing supply of highly-qualified real-time captioners even more thinly than they are currently. See Notice at ¶ 113.